

# **Attachment 9**

Andreas Badian

New York, NY

July 22, 2009

Page 1

1                   UNITED STATES DISTRICT COURT

2                   SOUTHERN DISTRICT OF NEW YORK

3                   -----X

4                   SECURITIES AND EXCHANGE

5                   COMMISSION,

6                   Plaintiff,

7                   -vs-                                   Civil Action No.

8   06-CV-2621 LTS

9                   ANDREAS BADIAN, et al.,

10                  Defendants.

11                  -----X

12

13                  VIDEOTAPED DEPOSITION OF ANDREAS BADIAN

14                  New York, New York

15                  July 22, 2009

16

17

18                  Reported by:

19                  Bonnie Pruszynski, RMR

20                  JOB NO. 15441

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14 Q Mr. Fisher, I'm going to play some  
15 audio tapes for that you were recording from the  
16 offices of Refco, and I would like to start with  
17 one. It is February 21, 2001. It's in the range  
18 of 85105 through 92554.

19 It is at the Alderson transcript,  
20 page four, line 16, through page eight, line  
21 eight.

22 (Audiotape played.)

23 Q Do you recognize any of the voices on  
24 that audiotape?

25 A I think one of them is me, and I

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1 A. Badian  
2 think the other one is Danny Graham.

26 (Pages 98 to 101)

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1 A. Badian  
2 deposition of Andreas Badian. The time is  
3 2:11.

4 We are off the record.

5 (Recess taken.)

6 THE VIDEOGRAPHER: This marks the  
7 beginning of tape number three in the  
8 videotape deposition of Andreas Badian.

9 The time is 2:20. We are back on the  
10 record.

11 MR. GUIDO: I think have already read  
12 into the record what it is. You can play  
13 it.

14 (Audiotape played.)

15 Q Do you recognize the voice on that?

16 A It sound like me and Danny Graham.

17 Q Let's go to 2/22/2001, 35443 to  
18 43313. Alderson transcript 328, line 18, to 329,  
19 ten.

20 (Audiotape played.)

21 Q Do you recognize the voice on that?

22 A It sounds like myself and Danny  
23 Graham.

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9 MR. GUIDO: Okay. Now, Mr. Fisher,  
10 February 22, 2001. It's in the range 100011  
11 to 101145. It's in the Alderson transcript  
12 at page 117, line seven, through 118, line  
13 one.

14 MS. GUPTA: I'm sorry, line four, did  
15 you say? 118, line four?

16 MR. GUIDO: 118, line one.

17 THE WITNESS: I'm sorry, sir. May I  
18 have a bathroom break.

19 MS. SCHECHTMAN: Certainly.

20 MR. GUIDO: Pardon?

21 MS. SCHECHTMAN: Yes. We need a  
22 break.

23 MR. GUIDO: We will take a break.

24 THE VIDEOGRAPHER: This marks the end  
25 of tape number two in the videotape

30 (Pages 114 to 117)

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	Page 118	Page 120
1	A. Badian	1 A. Badian
2	Q Now, let's go to 3/1/2001, 90030 to	2 Q I would like to go to 3/5/2001, 32433
3	93422.	3 through 35248, Alderson transcript 428, line four,
4	MS. GUPTA: In the Alderson	4 through 429, line two.
5	transcript?	5 (Audiotape played.)
6	MR. GUIDO: Alderson transcript page	6 Q Do you recognize the voices on that
7	38, line 12, through page 41, line 13.	7 audiotape?
8	MS. SCHECHTMAN: I just want to	8 A They sound like myself and Danny
9	object to the form of the last two	9 Graham.
10	questions.	10 Q Okay. March 5th, 2001, 33143 to
11	(Audiotape played.)	11 35248. Alderson transcript, 433, line six,
12	BY MR. GUIDO:	12 through 436, line 22.
13	Q Do you recognize the voices in that	13 (Audiotape played.)
14	transcript?	14 Q Do you recognize your voice in that
15	A They sound like Danny Graham and	15 audiotape?
16	myself.	16 A It sounds like me and Danny Graham,
17	Q Let's go to 3/1/2001, 111739 through	17 and some other people.
18	112051; Alderson 121, line 4, through 130, line	[REDACTED]
19	15.	[REDACTED]
20	(Audiotape played.)	[REDACTED]
21	Q Do you recognize the voices on that	[REDACTED]
22	audiotape?	[REDACTED]
23	A It sounded like Danny Graham.	23 Q Let's go to March 6, 2001. 83443 to
24	Q Do you recognize your voice?	24 93630. And it is at Alderson page 11, line 20,
25	A I was in there earlier, yeah, I	25 through page 16, line ten.
1	A. Badian	1 A. Badian
2	guess. Sorry.	2 (Audiotape played.)
3	Q I would like to go to March 2nd,	3 Q Do you recognize the voices on that
4	2001, 33524 through 33567; Alderson transcript,	4 audiotape?
5	256, line seven, through 256 line 22.	5 A It sounds like Danny Graham and
6	MS. SCHECHTMAN: I just want to	6 myself.
7	clarify that there appeared to be other	[REDACTED]
8	voices on the tape as well.	[REDACTED]
9	MR. GUIDO: I understand.	[REDACTED]
10	Q But did you recognize your voice and	[REDACTED]
11	Danny Graham's voice?	[REDACTED]
12	A Yes.	[REDACTED]
13	MS. SCHECHTMAN: Okay.	[REDACTED]
14	(Audiotape played.)	[REDACTED]
15	Q Do you recognize the voices on that?	[REDACTED]
16	A They sound like myself and Danny	[REDACTED]
17	Graham.	[REDACTED]
18	Q Let's go to 3/5/2001, 84114 through	[REDACTED]
19	84542. And it is Alderson transcript page five,	[REDACTED]
20	line four, through page seven, line 13.	[REDACTED]
21	(Audiotape played.)	[REDACTED]
22	Q Do you recognize the voices on that	[REDACTED]
23	audiotape?	[REDACTED]
24	A It sounds like myself and Danny	[REDACTED]
25	Graham.	[REDACTED]

31 (Pages 118 to 121)

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17 Q I would like to play the tape from  
18 March 8, 2001. 90626 through 93034, Alderson  
19 transcript, page nine, line 19 through page 11,  
20 line eight.  
21 (Audiotape played.)  
22 Q Do you recognize the voices on that  
23 audiotape?  
24 A Sounds like Danny Graham and myself  
25 goofing off once again.

17 Q Let's go to March 8, 2001, 115638  
18 through 122301. That is Alderson at six – page  
19 62, line 18, through page 64, line seven.  
20 (Audiotape played.)  
21 Q Do you recognize the voices on that  
22 audiotape?  
23 A It sounds like Danny Graham and  
24 myself.

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1 A Badian  
2 Q Okay. I would like to play the tape  
3 March 8, 2001. It's 114703 through 115200.  
4 Alderson transcript, page 54, line 20, through  
5 page 59, line 16.  
6 Although I would like to have the  
7 Mr. Ryan start this partway into that selection.  
8 (Audiotape played.)  
9 Q Starting where you asked about  
10 shorting in another stock, do you recognize the  
11 voices from that point on?  
12 A I think it's Jay, but it might be  
13 Matt.  
14 Q Jay Spinner or Matt Drillman?  
15 A Yes.  
16 Q And you were the other person –  
17 A Right.  
18 Q – on that part of the conversation?  
19 A Right.

14 Q Let's go to March 12, 2001, 90052 to  
15 90049, Alderson transcript page four, line four  
16 through page six, line 21.  
17 (Audiotape played.)  
18 Q Do you recognize your voice on that?  
19 A It sounds like myself and Danny  
20 Graham.  
21 Q And Danny Graham talking to somebody  
else later on?  
22 A Yes.

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8 Q Let's go to March 12, 2001. This  
9 time 121846 through 122853. It's the Alderson  
10 transcript at page 129, line nine, through 139,  
11 12.

12 (Audiotape played.)

13 Q Do you recognize the voices on that  
14 audiotape?

15 A I do. They sound like Dean Graham  
16 and myself.

17 Q Okay. Let's go to the next one,  
18 which I think is March 14, 2001, at 81908 through  
19 90712. Alderson transcript, page 11, line 12,  
20 through page 19, line five.

21 (Audiotape played.)

22 Q Do you recognize the voices on that  
23 audiotape?

24 A They sound like Danny Graham and  
25 myself.

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1 A. Badian  
2 Q Let's go to March 15, 2001, 121138  
3 through 12641. It's Alderson transcript 68, line  
4 20, through 72, line 14.  
5 (Audiotape played.)

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10	MR. GUIDO: Trading authority, okay.	1	A. Badian
11	Q Now, let's go to March 19, 2001,	2	myself.
12	84701 through 95948.	7	MR. GUIDO: You can stop right there,
13	That is Alderson page four, line 11,	8	Mr. Fisher.
14	through page six, line seven.	9	Let's go to 3/21/01, 90900 through
15	(Audiotape played.)	10	93259. Alderson transcript, 322 – page
16	Q Do you recognize the voices on that	11	three, line 22, through page eight. Line
17	audiotape?	12	12.
18	A Sounds like Danny Graham and myself.	13	(Audiotape played.)
19	Q Okay. Let's go to 3/19/2001, 34948	14	Q Do you recognize the voices on that
20	through 41041.	15	audiotape?
21	That is the Alderson transcript 294,	16	A They sound like Danny Graham and
22	line 20, to 295, line 12.	17	myself.
23	(Audiotape played.)	18	Q Okay. 3/22/2001, 103523 through
24	Q Do you recognize the voices on that	19	105322. Alderson transcript page 46, line 21
25	audiotape?	20	through 47, line 11.
		21	(Audiotape played.)
		22	Q Do you recognize the voices on that
		23	audiotape?
		24	A They sound like Danny Graham and
		25	myself.
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1	A. Badian	1	A. Badian
2	A It sounds like Danny Graham and	2	Q 3/22/2001, 115658 through 123159.
3	myself.	3	Alderson transcript page 60, line two to page 60,
4	Q Let's go to 3/20/2001 at 90406	4	line 11.
5	through 93625. Alderson transcript 14, line four,	5	(Audiotape played.)
6	through 18, line eight.	6	Q Do you recognize the voices on that
7	(Audiotape played.)	7	audiotape?
8	Q Do you recognize the voices on that	8	A They sound like Danny Graham and
9	audiotape?	9	myself.
10	A It sounds like Danny Graham and	10	Q We will go to March 23, 2001, 14403
11	myself.	11	through 30206. It's the Alderson transcript, 186
		12	line 16, through 187, line 15.
		13	(Audiotape played.)
		14	Q Do you recognize the voices on that
		15	audiotape?
		16	A One of them sounds like Danny. I
		17	don't recognize the other.

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19	Q Now, let's go to March 26, 2001. 83713 through 92504. It's Alderson transcript page 28, line six, through page 30, line six.	1 A. Badian 2 Q Do you recognize your voice on that 3 audiotape? 4 A It sounds like Danny Graham and 5 myself, and he's taking to go someone else, I 6 don't know who that is.
23	(Audiotape played.)	7 [REDACTED]
24	Q Do you recognize the voices on that 25 audiotape?	8 [REDACTED]
1	A. Badian	9 [REDACTED]
2	A It sounds like myself and Danny 3 Graham.	10 [REDACTED]
4	Q Okay. Look at, listen to 3/26/2001, 5 94326 through 103322, Alderson page 96, line 12 6 through 97, line seven.	11 [REDACTED]
7	(Audiotape played.)	12 [REDACTED]
8	Q Do you recognize the voices on that 9 audiotape?	13 [REDACTED]
10	A They sound like Danny Graham and 11 myself.	14 [REDACTED]
12	Q Let's go to the clip at 3/26/01, 13 94326 through 100332. And it's at Alderson page 14 99, line ten, through 101, line nine.	15 [REDACTED]
15	(Audiotape played.)	16 [REDACTED]
16	Q Do you recognize the voices on that 17 audiotape?	17 [REDACTED]
18	A They sound like Danny Graham, but 19 then he's talking to someone else. I'm not sure 20 who that is. And then he's talking to me at some 21 point.	18 [REDACTED]
22	Q I would like to play the clip 3/26/01 23 from 94326 through 100332. It's Alderson 24 transcript 103, line seven, through 106, line 17. 25 (Audiotape played.)	19 [REDACTED]
Page 135		Page 137
1	A. Badian	20 [REDACTED]
2	indicated that you were paradoxical, I think was 3 the term you used.	21 [REDACTED]
4	A Right.	22 [REDACTED]
5	[REDACTED]	23 [REDACTED]
6	[REDACTED]	24 [REDACTED]
7	[REDACTED]	25 [REDACTED]
8	[REDACTED]	

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1	A. Badian		
2	Q Let's go to March 26th, also in the	3	Let's go to 3/26/01, 12528 through
3	timeframe 100421 to 102429. Alderson transcript	4	13727.
4	146, line 17 through 155, 15.	5	MS. GUPTA: Alderson transcript?
5	MS. GUPTA: Ken, I just didn't hear.	6	MR. GUIDO: Alderson transcript, page
6	For the start time it was 1004.	7	246, line 17, through 247, line 17.
7	MR. GUIDO: 21 through 102429.	8	(Audiotape played.)
8	MS. GUPTA: Thank you.	9	Q Let's go to – do recognize the
9	(Audiotape played.)	10	voices on that audio script?
10	Q Do you recognize the voices on that	11	A Sounds like Danny Graham and myself.
11	audiotape?	12	Q 3/26/01, 22559 through 20725 Alderson
12	A They sound like Danny Graham and	13	transcript 283, line three, to 285, line seven.
13	myself. And I think there were some other people	14	(Audiotape played.)
14	in the background. I'm not sure.	15	Q Do you recall – do you recognize the
15	Q Let's go to 3/26/2001. 102500 to	16	voices on that transcript?
16	110823. It's Alderson transcript 179, line three,	17	A Sounds like myself and either Jay or
17	through 180, line 14.	18	Matt.
18	(Audiotape played.)		
19	Q Did you have three different people	25	Q All right. Let's go to 3/27/2001,
20	bidding on that stock that you asked Danny Graham		
21	to sell?		
22	A I don't recall.		
23	Q Do you recognize your voice on that		
24	transcript?		
25	A Yeah		
Page 143		Page 145	
10	Q It's exactly the same day.	1	A. Badian
11	Let's go to 3/26/01, 110902, 115109,	2	103248 through 112820.
12	Alderson transcript page 221, line six, through	3	It's Alderson transcript at page 38,
13	221, line 22.	4	line 13, through 39, line seven.
14	(Audiotape played.)	5	(Audiotape played.)
15	Q Do you recognize the voices on that	6	Q Do you recognize the voices on that
16	audiotape?	7	transcript or audio clip?
17	A Sounds like Danny Graham and myself.	8	A They sound like myself and Danny
		9	Graham and the third person that I don't
		10	recognize.
		11	Q 3/27/01, and 124651 through 124839,
		12	Alderson transcript, page 44, line 14, through 44,
		13	line 20.
		14	(Audiotape played.)
		15	Q Do you recognize the voices on that
		16	audiotape?
		17	A It sounds like myself and either Jay
		18	or Matt.
		19	Q Okay. Let's go to 3/28/2001, 84444
		20	through 93917, Alderson transcript page 22, line
		21	ten, through 23, line 17.
		22	(Audiotape played.)
		23	Q Do you recognize the voices on that
		24	audiotape?
		25	A Sounds like Danny Graham and myself.

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15 MR. GUIDO: I want to play for you,  
16 Mr. Badian, a clip of 3/28/01 at 10952  
17 through 122753, at the Alderson transcript,  
18 page 81, line nine, through 82 line ten.

19 (Audiotape played.)

20 Q Do you recognize the voices on that  
21 audiotape?

22 A They sound like Danny Graham and  
23 myself.

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11 Q Okay. 3/28/01, 125208 through 12421.  
12 Alderson transcript page 93, line ten, through 94,  
13 line 15.

14 (Audiotape played.)

15 Q Do you recognize the voices on that  
16 audiotape?

17 A They sound like Danny Graham and  
18 myself.

38 (Pages 146 to 149)

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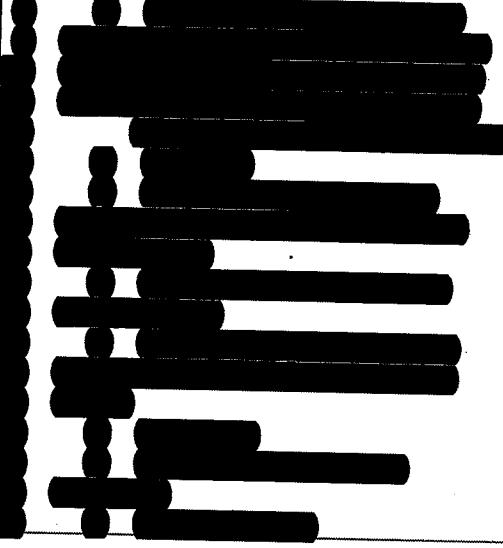
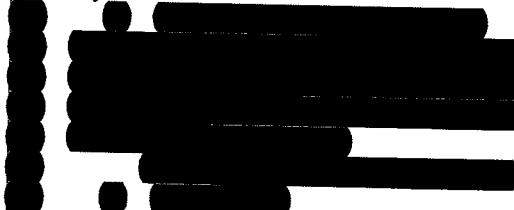
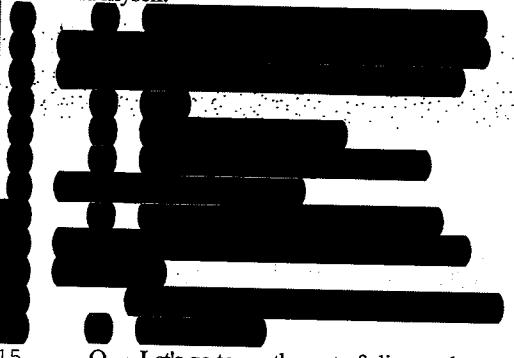
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24 Q Let's go to a clip at 3/29/01, 43312  
25 to 43554. It's Alderson page one, line three,

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	Page 154	Page 156
1	A. Badian	1 A. Badian
2	through page four, line 13.	2 Q Now, I want to play a tape 4/02/2001,
3	(Audiotape played.)	3 104056, Alderson transcript, 81 line, ten through
4	Q Do you recognize the voices on that	4 82, line 11, and also 4/02/2001, 114738 through
5	audiotape?	5 115255. Alderson page 98, line four, through 99
6	A It sounds like either Jay or Matt and	6 line four.
7	myself. 	7 (Audiotape played.)
19		8 Q Do you recognize the voices on those
20		9 audiotapes?
21		10 A It sounds like either Matt or Jay and
22		11 myself. 
15	Q Let's go to April 4, 2001 at 90944	19 Q Let's go to April 4, 2001 at 90944
16	through 93113, Alderson transcript, page one, line	20 through 93113, Alderson transcript, page one, line
17	four through page seven, line four.	21 four through page seven, line four.
18	(Audiotape played.)	22 (Audiotape played.)
19	Q Do you recognize the voices on that	23 Q Do you recognize the voices on that
20	audiotape?	24 audiotape?
21	A They sound like either Matt or Jay	25 A They sound like either Matt or Jay
	Page 155	Page 157
15	Q Let's go to the next clip, which is	1 A. Badian
16	at 4/02/2001, 92244 through 94416. It's Alderson	2 and myself. 
17	page 43, line five, through 44, line 22.	15 Q Let's go to another set of clips, and
18	(Audiotape played.)	16 it's at April 4th, 2001, 103951 through 105237.
19	Q Do recognize the voices on that	17 It's at Alderson page 5, line four, through page
20	audiotape?	18 16 line 15.
21	A They sound like either – oh, my. I	19 (Audiotape played.)
22	forgot their names – Jay and Matt and myself.	20 MR. GUIDO: You can stop it there.
23	Q And Jay Spinner and Matt Drillman and	21 Q Do you recognize the voices on that
24	yourself?	22 audiotape?
25	A Yes.	23 A They sound like either Jay or Matt
		24 and myself.
		25 Q All right. I want to play the tape,

40 (Pages 154 to 157)

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1 A. Badian  
2 4/12/2001 22342 through 23957, Alderson  
3 transcript, 206, line 17, through 209, line three.  
4 (Audiotape played.)  
5 MR. GUIDO: You can stop right there.  
6 Q Do you recognize the voices on that  
7 audiotape?  
8 A They sound like Danny and myself.  
9 Q I would like to play for you, tape at  
10 4/12/2001, 32445 through 33611?  
11 MS. GUPTA: Can I get the transcript  
12 references?  
13 MR. GUIDO: Alderson 214, line 15,  
14 through 217, line six.  
15 (Audiotape played.)  
16 Q Do you recognize the voices on that  
17 audiotape?  
18 A They sound like Danny Graham and  
19 myself.  
20 Q Okay. I would like to play  
21 4/12/2001, 33802 through 33544.  
22 MS. GUPTA: Alderson transcript page.  
23 MR. GUIDO: Alderson 221, 03 through  
24 221, 09.  
25 (Audiotape played.)

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1 A. Badian  
2 Q Do you recognize the voices on that  
3 audiotape?  
4 A They sound like either Matt or Jay  
5 and myself.  
6 Q I would like to direct - I would  
7 like you direct to you 4/16/01, 94751 to 100225,  
8 and it's Alderson transcript page 34, line 17  
9 through 36, line three.  
10 (Audiotape played.)  
11 Q Do you recognize the voices on that  
12 audiotape?  
13 A They sound like Danny Graham and  
14 myself.

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3 Q I would like to play for you a clip  
4 at 4/20/2001, 83427 through 95225. It's the  
5 Alderson transcript at page 29, line two, through  
6 page 30, line three.

7 (Audiotape played.)

8 Q Who are the voices on that audiotape?

9 A That sounds like myself and Danny  
10 Graham.

11 Q I would like to play for you  
12 April 19th, 2008, 92001 through 95458, Alderson  
13 transcript, page nine, line four, through page 11,  
14 line 12.

15 MS. GUPTA: This one was April 19th.  
16 Was the one previously – the one previously  
17 was April 20th?

18 MR. GUIDO: I just jumped ahead of  
19 myself.

20 MS. GUPTA: I just wanted to make  
21 sure.

22 (Audiotape played.)

23 MR. GUIDO: Stop the tape.

24 Q Do you recognize the voices on that  
25 audiotape?

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1 A. Badian

2 A They sound like Danny Graham and  
3 myself.